

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

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| IN RE: AGI IOWA, INC. | DOCKET NOS. TCU-01-12 WRU-01-24-3559 |
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ORDER APPROVING APPLICATION AND GRANTING WAIVERS

(Issued June 21, 2001)

On May 17, 2001, AGI Iowa, Inc. (AGI), filed an application for issuance of a certificate of public convenience and necessity, pursuant to Iowa Code § 476.29 (2001), stating its intention to provide resold and facilities-based local telecommunications services in Iowa. The application has been identified as Docket No. TCU-01-12. According to its application, AGI will initially provide private line data transmission services and then AGI intends to bundle data service with switched services. AGI requests authority to provide the full range of local exchange and interexchange services to permit flexibility in the expansion of its service offerings. Although tariffs are not required for the data private line services, AGI must have approved tariffs on file before providing switched local telecommunications services. According to its application, AGI intends to offer service initially in the service area of Qwest Corporation (Qwest). AGI states that while it will not initially be providing switched service to its customers, it pledges to provide 2-PIC dialing parity should it offer switched services in the future.

Iowa Code § 476.29(2) (2001) provides that the local exchange carrier shall not be denied a certificate if the Utilities Board (Board) finds that the applicant "possesses the technical, financial, and managerial ability to provide the service it proposes to render and the Board finds the service is consistent with the public interest."

The Board has reviewed AGI's application and finds the necessary technical, financial, and managerial ability to provide local exchange service has been demonstrated. The Board will therefore approve AGI's application. Since AGI does not intend to provide exchange services at this time, it does not need a certificate. Before AGI provides exchange services in Iowa, it must file proposed tariffs and local exchange service and service area maps for approval by the Board.

AGI has requested that the Board waive the requirements of 199 IAC 16.5(2), 18.2, and 22.3(1). The waiver requests were identified as Docket No. WRU-01-24-3559.

AGI requested a waiver of 199 IAC 16.5(2), which requires the keeping of records according to the uniform system of accounts. AGI states that it employs an accounting system in accordance with generally accepted accounting principles (GAAP). The Board finds that this waiver should be granted, since records kept in accordance with GAAP accounting are acceptable for a competitive local exchange service provider.

AGI has requested that the requirements of 199 IAC 18.2 be waived. The rule requires that a regulated public utility keep its records in Iowa. The Board will grant

the waiver based upon the statement of AGI that it will make the records available to the Board upon request.

AGI also requested the Board waive 199 IAC 22.3(1), requiring it to independently publish a directory. The Board will grant this waiver since AGI does not have a sufficient number of customers to warrant publishing a directory and AGI states that it will provide customer information to incumbent carriers for inclusion in their directories.

Rule 199 IAC 1.3 states that the Board may grant a waiver if it finds, based upon clear and convincing evidence, that the application of the rule would pose an undue hardship, would not prejudice the substantial legal rights of any person, the provisions waived are not specifically mandated by statute, and substantially equal protection of public health, safety, and welfare will be afforded after the waiver. The Board has considered the waiver requests described above and finds that the waivers meet the four criteria of the rule and the evidence in support of the waivers is clear and convincing.

Adherence to these three rules would be an undue hardship on a competitive telecommunications company just beginning to do business in Iowa. It would be an undue hardship for such companies to keep a separate set of books just for Iowa, to maintain a separate office in Iowa, and to publish a directory for just their customers. The Board finds there are no substantial legal rights of any person that are affected by these waivers and there is no statute that specifically mandates the actions waived. Additionally, the Board finds that there will be substantial equal protection

for health, safety, and welfare provided since the actions waived will be completed under different circumstances.

AGI does not propose to initially offer local exchange services and therefore does not need either a certificate or approved tariffs to provide its high speed private line data service. Before the Board will issue a certificate for AGI to provide local exchange service AGI will need to file proposed tariffs for Board approval that set out the terms conditions, and rates for providing the switched service. The Board finds that a certificate should not be issued to AGI until it has approved tariffs and has adopted the exchange maps and boundaries of Qwest or has filed proposed tariffs with maps and exchange area boundaries of where it intends to provide service.

IT IS THEREFORE ORDERED:

1. The application for a certificate of public convenience and necessity filed by AGI Iowa, Inc., on May 17, 2001, is approved, subject to the requirements that follow.

2. Before AGI Iowa, Inc., begins providing exchange services, it must adopt the local exchange and service area maps of the incumbent local exchange carrier where it intends to provide exchange services, or file proposed tariffs with maps and exchange area boundaries.

3. Before AGI Iowa, Inc., begins providing exchange services, it must file proposed tariffs with the Board indicating it is ready to provide local exchange service in Iowa and give notice to all affected local exchange carriers. Upon approval of tariffs to reflect the prices, terms, and conditions of local exchange service, the Board

will issue a certificate of public convenience and necessity allowing AGI Iowa, Inc., to provide local exchange service in Iowa.

4. The request for waivers of 199 IAC 16.5(2), 18.2, and 22.3(1) is granted.

UTILITIES BOARD

/s/ Allan T. Thoms

/s/ Susan J. Frye

ATTEST:

/s/ Judi K. Cooper
Acting Executive Secretary

/s/ Diane Munns

Dated at Des Moines, Iowa, this 21st day of June, 2001.